FDIC Seminar on Deposit Insurance Coverage For Bankers - Advanced

2010

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Outline

Part 1 – Overview of Ownership Categories

Part 2 – Revocable Trust Accounts

Part 3 – Irrevocable Trust Accounts

Part 4 – Employee Benefit Plan Accounts

Part 5 – Noninterest-bearing Transaction Accounts

Part 6 – Fiduciary and Agency Accounts

Part 7 – Issues When An FDIC-Insured Bank Merges or Fails

Part 8 – Deposit Insurance Coverage Resources

PART 1

OVERVIEW OF OWNERSHIP CATEGORIES

Ownership Categories

An "ownership category," also referred to as "right and capacity" in the deposit insurance regulations, is defined by either statute or by regulation and provides for separate FDIC deposit insurance coverage.

If a depositor can meet the rules for a specific category, then their deposits will be entitled to both of the following:

1) Up to "SMDIA" amount of deposit insurance coverage that is provided for under the ownership category, and
2) Separate coverage from funds that may be deposited under a different ownership category.

Ownership Categories

Owners = Individuals

CATEGORY 1 - SINGLE ACCOUNTS

CATEGORY 2 - JOINT ACCOUNTS

CATEGORY 3 - REVOCABLE TRUST ACCOUNTS

CATEGORY 4 - IRREVOCABLE TRUST ACCOUNTS

CATEGORY 5 – CERTAIN RETIREMENT ACCOUNTS

CATEGORY 6 - EMPLOYEE BENEFIT PLAN ACCOUNTS

Owner = Business/Organizations

CATEGORY 7 – CORPORATION PARTNERSHIP UNINCORPORATED ASSOCIATION ACCOUNTS

Owners = Government Entities or Political Subdivisions

CATEGORY 8 – GOVERNMENT ACCOUNTS

CATEGORY 9 - PRINCIPAL & INTEREST FUNDS IN MORTGAGE SERVICING ACCOUNTS

CATEGORY 10 - NONINTEREST-BEARING TRANSACTION ACCOUNTS

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Seminar on Deposit Insurance Coverage

PART 2

REVOCABLE TRUST ACCOUNTS

Category 3 – Revocable Trust Accounts

Revocable Trust Accounts - 12 C.F.R. § 330.10

What is a revocable trust account?

- A deposit account that indicates an intention that the funds will belong to one or more named beneficiaries upon the owner's death

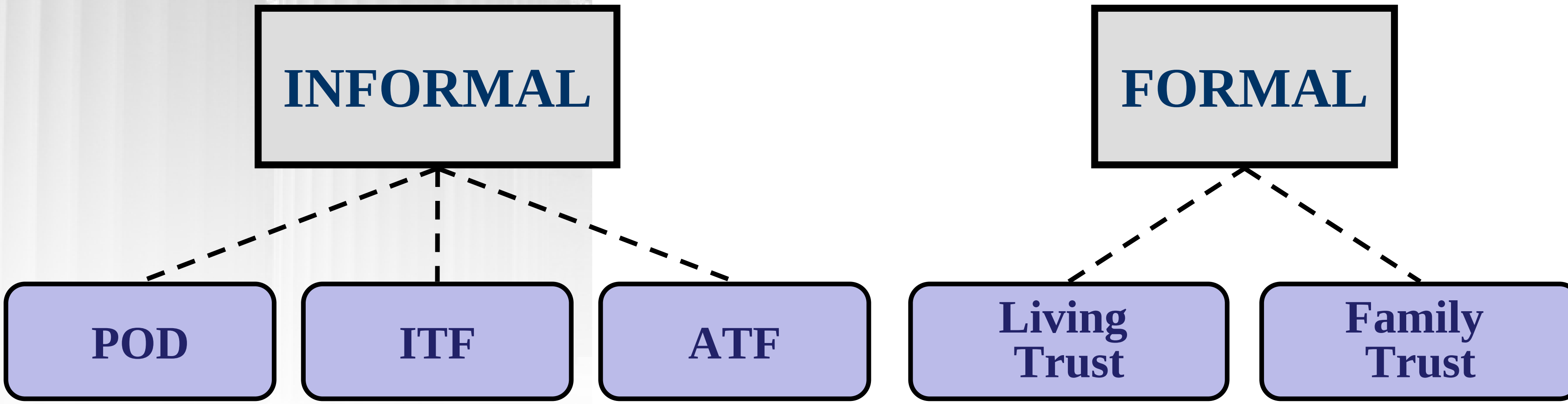
What does revocable mean?

- The owner retains the right to change beneficiaries and allocations or to terminate the trust

What are the types of revocable trusts?

- Informal revocable trusts
- Formal revocable trusts

Category 3 – Revocable Trust Account Types



"Payable-on-Death" (POD) accounts or other similar terms such as "In-Trust-For" (ITF) or "As-Trustee-For" (ATF)

Account must be titled in the name of the formal trust

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Category 3 – Revocable Trust Requirements

Updated on October 19, 2009!

Trust Relationship Must Exist in the Account Title

The disclosure requirements for revocable trust accounts are found in 12 C.F.R. § 330.10(b), which states:

> The required intention in paragraph (a) of this section that upon the owner's death the funds shall belong to one or more beneficiaries must be manifested in the "title" of the account using commonly accepted terms such as, but not limited to, "in trust for," "as trustee for," "payable-on-death to," or any acronym therefor. **For purposes of this requirement, "title" includes the electronic deposit account records of the institution. (For example, the FDIC would recognize an account as a revocable trust account even if the title of the account signature card does not designate the account as a revocable trust account as long as the institution's electronic deposit account records identify (through a code or otherwise) the account as a revocable trust account.)**

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Category 3 – Revocable Trust Requirements

Who is a beneficiary?

- The owner and beneficiary **no longer** must meet the kinship requirement that each beneficiary must be related to the owner from one the following five groups: parent, sibling, spouse, child, or grandchild.

Who or what can be a beneficiary?

- The beneficiary must be an eligible beneficiary as defined below:
  - A natural person (living)
  - A charity (must be valid under IRS rules)
  - A non-profit organization (must be valid under IRS rules)

Category 3 – Revocable Trust Requirements

- **Who or what is or not allowed as a beneficiary?** Pets, deceased persons or the naming of any object or entity that does not meet the eligibility requirements. Any beneficiary that is not legally entitled to receive funds upon the owner's death will be ignored.

- **What about deposits opened "POD to the Trust?"** If a deposit is titled, as an example, **"John Smith POD to the John Smith Revocable Trust,"** the FDIC will treat the deposit as an account in the name of the depositor's revocable trust (i.e., the "John Smith Revocable Trust"). The funds will no longer be insured as a reversion or default to the owner's **Category 1 – Single Accounts.**

Category 3 – Revocable Trust Coverage

Coverage depends on the number of beneficiaries named by an owner and the amount of the deposit

1. **The owner names five or fewer unique eligible beneficiaries and the total deposit(s) allocated to all beneficiaries combined is $1,250,000 or less, then the insurance coverage is:**

   - Up to $**250,000 times the number of unique eligible beneficiaries** named by the owner. This applies to the combined interests for all beneficiaries the owner has named in all (both informal and formal) revocable trust deposits established in each bank.

   - **The result is the same as above even if the owner has allocated different or unequal percentages or amounts to multiple beneficiaries.** To calculate the deposit insurance coverage, multiply $250,000 times number of owners times number of unique eligible beneficiaries.

Category 3 – Revocable Trust Coverage

Coverage depends on the number of beneficiaries named by an owner and the amount of the deposit

2. **The owner names six or more unique eligible beneficiaries and the deposit is greater than $1,250,000:**
   - If the owner is attempting to insure more than $1,250,000 with **six or more unique eligible beneficiaries** where **the allocation to each and every beneficiary is equal,** the deposit insurance coverage is **$250,000 times the number of unique eligible beneficiaries.**
   - If the owner is attempting to insure more than $1,250,000 with **six or more unique eligible beneficiaries** with **<u>unequal</u> percentages or dollar amount allocations to the beneficiaries**, the deposit insurance coverage is the greater of $1,250,000 or the total of specific allocations to all named beneficiaries, up to $250,000 per beneficiary. Therefore, if the total deposit is greater than $1,250,000 and the allocation to a beneficiary exceeds $250,000, the excess above $250,000 will be uninsured.

Category 3 – Revocable Trust Coverage

Seven questions that must be answered before you can determine FDIC insurance coverage for a revocable trust account are:

1. Who are the owners of the trust account?
2. Who are the primary unique beneficiaries upon the death of the last owner?
3. Are the primary unique beneficiaries “eligible” ?
4. Are the primary unique beneficiaries identified in the bank’s deposit account records (for informal trusts) or in the trust agreement (for formal trusts) living?
5. What is the dollar amount or percentage interest each owner has allocated to each primary unique beneficiary?
6. Does the owner(s) have any other revocable trust accounts in the same bank?
7. Are the revocable trust accounts properly titled?

Category 3 – Revocable Trust Calculation

1. **Who are the owners of the trust account?**
   - In informal trust accounts, the depositor is the owner of the account. In formal revocable trusts, the owner is commonly referred to as a **Grantor, Trustor or Settlor**. **Trustee and successor trustee designations** are irrelevant in the determination of deposit insurance coverage.
2. **Who are the primary unique beneficiaries upon the death of the last owner?**
   - At the time a bank fails, the beneficiary must be entitled to his or her interest in the revocable trust assets upon the grantor's death and that ownership interest does not depend upon the death of another trust beneficiary. Contingent beneficiaries do not count. Life estate beneficiary interests are allowed up to $250,000 in deposit insurance coverage.

Category 3 – Revocable Trust Calculation

3. Are the primary unique beneficiaries "eligible"?

- Eligible beneficiaries are natural persons, charities or non-profit organizations recognized as such by the Internal Revenue Service. FDIC **no longer** looks to see if a beneficiary is "qualifying" - that is a parent, sibling, spouse, child or grandchild of the grantor. If the named beneficiary cannot under state law receive funds when the owner dies, the beneficiary's interest is considered invalid.

4. Are the primary unique beneficiaries identified in the bank's deposit account records (for informal trusts) or in the trust agreement (for formal trusts) living?

- The death of either an owner(s) or beneficiary(ies) can impact the calculation of deposit insurance coverage.
- Please remember there is no six-month grace period for the death of a beneficiary for revocable trust deposits. If there is no substitute beneficiary named when a primary beneficiary dies, the amount of deposit insurance coverage may decrease for this deposit.

Category 3 – Revocable Trust Calculation

5. **What is the dollar amount or percentage interest each owner has allocated to each primary beneficiary?**

- Assuming the owner is attempting to insure $1,250,000 or less with five or fewer unique eligible beneficiaries, the coverage is calculated as follows for each owner naming:

  1 beneficiary = up to $ 250,000 insurance coverage

  2 beneficiaries = up to $ 500,000 insurance coverage

  3 beneficiaries = up to $ 750,000 insurance coverage

  4 beneficiaries = up to $1,000,000 insurance coverage

  5 beneficiaries = up to $1,250,000 insurance coverage

Note: If there are two owners, the deposit insurance coverage amount is calculated using: (# of owners) times (# of beneficiaries) times $250,000

Category 3 – Revocable Trust Calculation

5. (Continued)

- Assuming the owner is attempting to insure more than $1,250,000 with six or more unique eligible beneficiaries with EQUAL interests, the coverage is calculated as follows for each owner naming:

  6 beneficiaries = up to $1,500,000 insurance coverage
  7 beneficiaries = up to $1,750,000 insurance coverage
  8 beneficiaries = up to $2,000,000 insurance coverage
  9 beneficiaries = up to $2,250,000 insurance coverage
  10+ = add up to $250,000 insurance coverage for each additional beneficiary

- Assuming the owner is attempting to insure more than $1,250,000 with six or more unique eligible beneficiaries with UNEQUAL beneficial interests, the FDIC will compute the deposit insurance coverage based on the greater of either the specific allocations provided for under the trust agreement or the minimum amount of at least $1,250,000.

Category 3 – Revocable Trust Calculation

6. **Does the owner(s) have any other revocable trust accounts in the same bank?**
   - In calculating deposit insurance coverage for revocable trusts, the FDIC combines the interests of all beneficiaries the owner has named in all formal and informal revocable trust accounts at the same bank.

7. **Are the revocable trust accounts properly titled?**
   - The account title at the bank must indicate that the account is held pursuant to a trust relationship. This rule can be met by using the terms living trust, family trust, or any similar language, including simply having the word “trust” in the account title. For informal trusts, descriptive language such as POD or ITF must be in the account title.

Category 3 – Revocable Trust Coverage

Unequal Beneficiary Allocations – POD Account

Example 1:	Balance
Account #1: John POD Mary	= $ 350,000
Account #2: John POD Sara	= 50,000

Total	= $ 400,000

Are these accounts fully insured? YES!

When five or fewer unique eligible beneficiaries are named, the insurance coverage is calculated as the number of owners times the number of beneficiaries. In this example, with one owner and two beneficiaries, the coverage is $500,000:

(1 owner times 2 beneficiaries times $250,000 = $500,000)

Since the total of both accounts is $400,000, this amount is fully insured because the combined balance is less than $500,000.

Category 3 – Revocable Trust Coverage

Example 2:

		Balance
Account #1: John POD Mary	=	$350,000
Account #2: John POD Sara	=	$175,000

Total	=	$525,000

Are these accounts fully insured? NO!

The combined amount of $500,000 is insured with $25,000 uninsured

The insurance coverage calculation is:
One owner times two beneficiaries times $250,000 = $500,000

What if the bank fails?
Can or will the FDIC “revert or default” the uninsured $25,000 back to **Category 1 – Single Accounts** if John has not used this category?

NO!

Category 3 – Revocable Trust - Misconceptions

Example 3:

OWNER
John
POD
Lisa
(Wife)

Facts:
John POD Lisa (wife)

What is the maximum insured amount for this deposit?

Answer = Misconception is that the coverage is Owners Plus Beneficiaries Times $250,000. Calculation is Owners (John) Times Beneficiaries (Lisa) Times $250,000 = $250,000

Example 4:

OWNER
John
POD
Fido
(Pet)

Facts:
John POD Fido (pet)

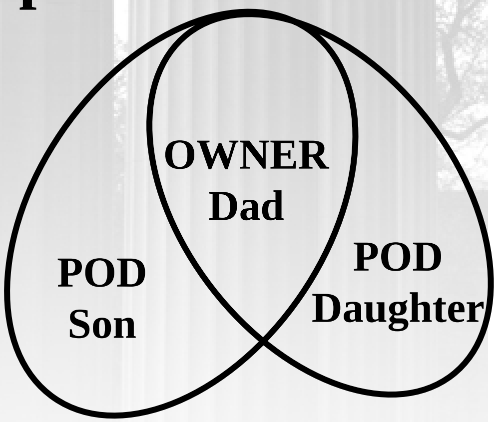
What is the maximum insured amount for this deposit?

Answer = There are two misconceptions that are commonly made in this example. First that $250,000 is insurable (correct), not $500,000 (incorrect). Second that John's deposit would be insured under Category 1 – Single Accounts (correct), not Category 3 – Revocable Trusts (incorrect)

Part 2

Category 3 – Revocable Trust - Misconceptions

Example 5:



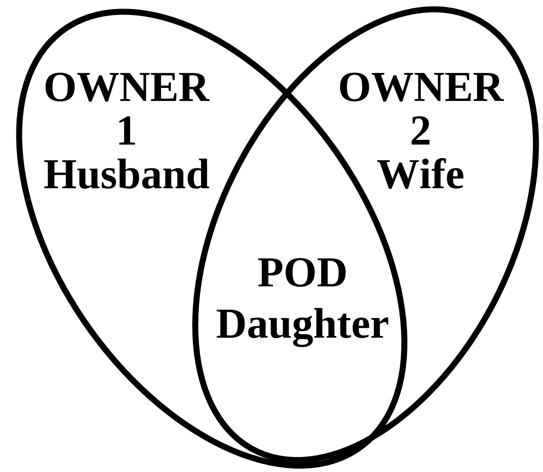
<u>Facts:</u>

<u>Dad POD Son and Daughter</u>

What is the maximum insured amount for this deposit?

<u>Answer</u> = $500,000 not $750,000. Calculation is number of Owners times number of Beneficiaries times $250,000= 1 owner (Dad) X 2 beneficiaries (Son and Daughter) X $250,000 = $500,000

Example 6:



<u>Facts:</u>

<u>Husband and Wife POD Daughter</u>

What is the maximum insured amount for this deposit?

<u>Answer</u> = $500,000 not $750,000. Calculation is number of Owners times number of Beneficiaries times $250,000= 2 owners (Husband and Wife) X 1 beneficiary (Daughter) X $250,000 = $500,000

Category 3 – Revocable Trust Calculation

Example 7:

Facts: John is the owner of a living trust. What is the maximum this trust can be insured for with six beneficiaries named each receiving an equal interest?

Beneficiary 1 = 1/6 to Sally
Beneficiary 2 = 1/6 to James
Beneficiary 3 = 1/6 to Amy
Beneficiary 4 = 1/6 to ABC Charity (IRS qualified)
Beneficiary 5 = 1/6 to John's College (IRS qualified)
Beneficiary 6 = 1/6 to XYZ Non-profit (IRS qualified)

What is the maximum coverage?

Coverage is calculated as follows:

1 Owner X $250,000 X 6 Eligible Beneficiaries = $1.5 million

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Category 3 – Revocable Trust Calculation

Example 8:

Facts: John is the owner of a living trust that provides the following when he dies:

Beneficiary 1 = $ 350,000 to Sally
Beneficiary 2 = $ 50,000 to James
Beneficiary 3 = $ 200,000 to Amy
Beneficiary 4 = $ 300,000 to ABC qualifying charity
Beneficiary 5 = $ 300,000 to XYZ qualifying non-profit

Total Allocations = $1,200,000

Can John open this deposit at your bank and be fully insured for the entire amount of $1,200,000?

YES !

Since there is one owner with five or fewer unique eligible beneficiaries, we can calculate the coverage as follows:

One Owner (1) Times five Beneficiaries (5) Times $250,000 = Total Coverage up to $1,250,000

Because the total deposit of $1,200,000 is less than $1,250,000 the deposit is fully insured

Category 3 – Revocable Trust Calculation

Coverage Calculations for Six or More Beneficiaries with Unequal Allocations

If the owner is attempting to insure more than $1,250,000 and has named **six or more unique eligible** beneficiaries under one or more revocable trust deposits, but has **unequal percentages or dollar amount allocations to the beneficiaries, then no specific allocation to any beneficiary can exceed $250,000.**

If any beneficiary's allocation does exceed $250,000, then the default total insurable amount (with no uninsured funds) is a maximum deposit of $1,250,000.

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Category 3 – Revocable Trust Calculation

Coverage Calculation Steps - Six or More Beneficiaries with Unequal Allocations

Step 1 - Under the trust agreement, determine what is the largest percentage allocated to any one beneficiary. If dollar allocations are used instead of percentages, then simply take the largest dollar allocation and divide that by the total amount for all allocations to convert to the largest percentage allocation.

Step 2 - Take the SMDIA ($250,000) and **divide** this amount by the percentage found in Step 1.

Step 3 - Look at the result. If the amount is less than $1,250,000 then the maximum insurable amount is exactly $1,250,000 using this trust agreement. If the result is greater than $1,250,000, then this amount represents the maximum amount that can be deposited using this trust agreement with no uninsured funds.

Category 3 – Revocable Trust Calculation

Breakeven Calculation

If one or more beneficiaries have an allocated interest **at or ABOVE 20%,** then we know that by dividing the SMDIA ($250,000) by the highest percentage allocation attributable to a beneficiary under the trust agreement, the result will always be $1,250,000 or less and therefore we can simply use the default amount of $1,250,000 as the maximum insurable amount with no uninsured funds.

If all the beneficiaries have an allocated interest **at or BELOW 20%,** then we know that by dividing the SMDIA ($250,000) by the highest percentage allocation attributable to a beneficiary under the trust agreement, the result of the formula will be an amount of deposit insurance coverage greater than $1,250,000.

Category 3 – Revocable Trust Calculation

Table below presents a sample of the deposit insurance coverage amount available using different percentages.

Beneficiary with Largest Percentage/Share	Break Even Calculation	Coverage Amount
19%	$250,000/.19	$1,315.789.47
20%	**$250,000/.20**	**$1,250,000.00**
21%	$250,000/.21	$1,190,476.19*

*Defaults to $1,250,000

Category 3 – Revocable Trust Calculation

Example 9:

Facts: John's trust provides the following allocations when he dies:

Beneficiary 1 = $ 500,000 to Sally
Beneficiary 2 = $ 150,000 to James
Beneficiary 3 = $ 250,000 to Amy
Beneficiary 4 = $ 225,000 to ABC qualifying charity
Beneficiary 5 = $ 175,000 to XYZ qualifying non-profit
Beneficiary 6 = $ 200,000 to JKL qualifying non-profit

Total Allocations = $1,500,000

Can John open this deposit at your bank and be fully insured for the entire amount of $1,500,000?

No!

If $1,500,000 is deposited, then $1,250,000 is insured and $250,000 is uninsured because Sally's allocation of $500,000 creates $250,000 of uninsured funds.

Category 3 – Revocable Trust Calculation

Example 9 (continued):

What is the maximum amount that can be deposited using this trust with 100% of the deposit fully insured?

Step 1: Take the highest amount to be received by a beneficiary and convert this to a percentage ($500,000/$1,500,000 = 33-1/3%).

Step 2: Take the SMDIA of $250,000 and divide this by our highest percentage allocated from Step 1. This would be $250,000 / 33-1/3% = $750,000.

Step 3: The amount of deposit insurance coverage is the greater of either the result from Step 2 or $1,250,000. Therefore, the maximum insurable amount with no uninsured funds in this example is $1,250,000.

Reminder: If you have six or more unique eligible beneficiaries the coverage is at least up to $1,250,000

Category 3 – Revocable Trust Calculation

Example 10:

Facts: John's trust provides the following allocations when he dies:

Beneficiary 1 = $ 400,000 to Sally
Beneficiary 2 = $ 150,000 to James
Beneficiary 3 = $ 250,000 to Amy
Beneficiary 4 = $ 225,000 to ABC qualifying charity
Beneficiary 5 = $ 275,000 to XYZ qualifying non-profit
Beneficiary 6 = $ 200,000 to JKL qualifying non-profit
Beneficiary 7 = $ 150,000 to Joe
Beneficiary 8 = $ 150,000 to Chris
Beneficiary 9 = $ 175,000 to Kate
Beneficiary 10 = $ 125,000 to Kathy

Total = $2,100,000

Can John open this deposit at your bank and be fully insured for $2,100,000?

NO!

If $2,100,000 is deposited, then $1,925,000 is insured and $175,000 is uninsured ($150,000 to Sally and $25,000 to XYZ).

Category 3 – Revocable Trust Calculation

Example 10 (continued):

What is maximum DI coverage with 100% fully insured?

Step 1: $400,000/$2,100,000 = 19.04% (rounded)

Step 2: $250,000 is then divided by 19.04% = $1,313,025

Step 3: Compare the result from Step 2 to $1,250,000. Since the breakeven calculation of $1,313,025 is **greater** than $1,250,000, then this amount represents the maximum amount that can be deposited with no uninsured funds.

Category 3 – Revocable Trust Calculation

Depositor with a POD account naming 3 eligible beneficiaries

+

Depositor with a living trust account identifying the same 3 beneficiaries

Account # 1
David Smith
POD to
Andy, Betty and Charlie
Balance is $750,000

Account # 2
David Smith Revocable Trust
which names Andy, Betty and Charlie as beneficiaries
Balance is $750,000

A depositor cannot establish both of these accounts and receive $1,500,000 of deposit insurance!

The total coverage for both accounts is $750,000.

PART 3

IRREVOCABLE TRUST ACCOUNTS

Category 4 – Irrevocable Trust Requirements

Irrevocable Trust Accounts - 12 CFR § 330.13

For the purpose of FDIC deposit insurance, irrevocable means that the grantor (person who created the trust) does not possess power to terminate or revoke trust.

- **An irrevocable trust may be created through:**
  - Death of grantor of revocable living trust
  - Execution or creation of an irrevocable trust agreement
  - Statute or court order
- **An irrevocable trust deposit must be linked to a written trust agreement**
  - There is no "POD" or "ITF" option.

Category 4 – Irrevocable Trust Coverage

Insurance coverage for irrevocable trust deposits is usually no more than $250,000

No per-beneficiary coverage if:

- Owner retains interest in the use of the trust assets (if so, funds are insured to owner as **Category 1 – Single Account** deposits)
- Interests of beneficiaries are contingent or not ascertainable (if so, all such interests are added together and insured up to $250,000). For example:
  - Beneficiaries do not receive funds unless certain conditions are met
  - Trustee may invade principal of the trust on behalf of a beneficiary
  - Beneficiaries or trustee may exercise discretion in allocating funds

Category 4 – Irrevocable Trust Calculation

Effective October 19, 2009

When a revocable trust deposit converts to an irrevocable trust because of the death of the owner(s), the FDIC may continue to apply the original revocable trust coverage provided the deposit was established while the trust was revocable in the bank.

Example: The "John Smith Revocable Trust" names his wife with a life estate interest and his two children as remainder beneficiaries. This trust deposit is opened for $750,000 in a two year CD and is fully insured. John died a year ago and the trust became irrevocable. The trust allows for his wife to use 100% of the assets during her life time if needed.

What is the maximum deposit insurance coverage allowed?

Coverage will remain at $750,000 instead of dropping to $250,000 because the deposit in the bank was opened while the trust was revocable.

PART 4

EMPLOYEE BENEFIT PLAN ACCOUNTS

Category 6 – Employee Benefit Plan Accounts

Employee Benefit Plans - 12 C.F.R. § 330.14

- Employee benefit plan accounts are deposits held by any plan that satisfies the definition of an employee benefit plan in section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA).
- Account title must indicate the existence of an employee benefit plan
- Plan administrator must be prepared to produce copies of the plan documents
- Coverage is up to $250,000 **for each participant's non-contingent interest**

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Category 6 – Employee Benefit Plan Accounts

Types of Employee Benefit Plans:

- Defined contribution plans, including profit-sharing plans and 401(k) plans that do not qualify as "self-directed" plans
- **All** defined benefit plans are insured under this category

Note: Typically there are multiple participants in an employee benefit plan account. It is therefore possible for pass-through insurance to apply and for the total deposit insurance coverage for the plan to exceed $250,000 for each participant's non-contingent interest.

Category 6 – Employee Benefit Plan Accounts

Account Title: "The Pet Vet Clinic Defined Benefit Plan"

Plan Participants	Share of Plan*
Dr. Todd	40%
Dr. Jones	30%
Tech Barnes	10%
Tech Evans	10%
Tech Cassidy	10%
Plan Totals	**100%**

- Assume the actuary for the plan has determined these percentages represent the vested non-contingent share for each participant. The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the employee's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the bank.

Category 6 – Employee Benefit Plan Accounts

What is the maximum amount that can be deposited for this plan with 100% of the deposit fully insured?

Maximum coverage per participant	$ 250,000	
Divided by	÷	
Largest participant interest	.40	(Dr. Todd)
Maximum deposit insurance amount eligible for full insurance coverage	=	$ 625,000

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Category 6 – Employee Benefit Plan Accounts

Account Title: The Pet Vet Clinic Defined Benefit Plan $ 625,000

Plan Participants	Share of Plan	Share of Deposit	Amount Insured	Amount Uninsured
Dr. Todd	40%	$ 250,000	$ 250,000	$ 0
Dr. Jones	30%	187,500	187,500	0
Tech Barnes	10%	62,500	62,500	0
Tech Cassidy	10%	62,500	62,500	0
Tech Evans	10%	62,500	62,500	0
Totals	**100%**	**$ 625,000**	**$ 625,000**	**$ 0**

PART 5

NONINTEREST-BEARING TRANSACTION ACCOUNTS

Category 10 – Noninterest-bearing Deposits

Important!

Beginning December 31, 2010, the coverage for "Noninterest-bearing Transaction Account Deposits" will change.

1) **Through 12/31/2010 Only! (Based on the temporary FDIC TAGP)**

   These rules apply to deposits meeting the definition of a noninterest-bearing transaction account deposit under the Transaction Account Guarantee Program (TAGP) at participating banks. The unlimited guarantee under this program ends on December 31, 2010.

2) **Beginning 12/31/2010 and ending on 12/31/2012 (Based on "Dodd-Frank Wall Street Reform and Consumer Protection Act")**

   The recently enacted "Dodd-Frank Wall Street Reform and Consumer Protection Act" provides unlimited deposit insurance coverage for two years (from December 31, 2010 to December 31, 2012) for noninterest-bearing transaction accounts. While the Dodd-Frank coverage provision for noninterest-bearing transaction accounts is similar to the protection afforded under TAGP, there are important differences. The FDIC anticipates issuing final rules in early December 2010 to implement the Dodd-Frank provision.

Category 10 – Noninterest-bearing Deposits

Through 12/31/2010 Only!

- The TAGP is a temporary regulatory program created by the FDIC on October 14, 2008.
- The program provides unlimited protection to deposits that meet the definition of a noninterest-bearing transaction account at banks that have specifically elected to participate in the program.
- The TAGP has been extended several times with some banks electing to "opt out" during the course of the program.
- The applicable interest rate for the eligibility of NOW account deposits has changed from (0.5% to 0.25%) with the extensions of the program.
- The TAGP ends on December 31, 2010.

Category 10 – Noninterest-bearing Deposits

Requirements for eligibility under TAGP:

- This supplemental coverage only applies to participating FDIC-insured banks.
- A noninterest-bearing transaction account deposit is defined as an account on which the bank pays no interest and does not reserve the right to require notice of intended withdrawals. Through 12/31/2010 deposits that are deemed to meet this definition are specifically limited to:
  - Traditional checking accounts that allow for unlimited deposits and withdrawals at any time
  - "NOW" account deposits that earn ¼ of 1% or less and for which the bank has committed to maintain the interest rate at or below that level
  - All "IOLTA" deposits
  - Official checks (those issued by banks – for example, cashiers' checks, certified checks, money orders)

Important! Any other type of transaction account or any other type of deposit that earns any amount of interest is excluded. This includes all CDs, MMDAs and savings accounts.

PART 6

FIDUCIARY and AGENCY ACCOUNTS

Fiduciary and Agency Accounts

Recognition of deposit ownership and fiduciary relationships including accounts held by an agent, nominee, guardian, custodian or conservator are described under 12 C.F.R § 330.5 and 12 C.F.R. § 330.7.

Important!

Fiduciary or agency accounts **are not** an ownership category.

These are deposit accounts established and maintained by third parties on behalf of the actual owner (also referred to as the principal).

What makes these deposits different?

- An account that meets the definition of a fiduciary or agency account is entitled to "pass-through" deposit insurance coverage from the FDIC through the third party who establishes the account to the actual owner or owners of the funds. The deposit account can be established for the benefit of a single owner or a co-mingled account may be established for the benefit of multiple owners.

Fiduciary and Agency Accounts

Examples of Third Parties Who Establish Fiduciary Accounts
Agent
Nominee
Guardian
Conservator
Executor
Broker

Examples of Fiduciary or Agency Accounts Include
Escrow
Brokered CDs
Uniform Transfer to Minors Act (UTMA)
Attorney Trust (IOLTA)
Custodial
Power of Attorney

Fiduciary and Agency Accounts

What is “pass-through” deposit insurance coverage?

- When funds are deposited by a fiduciary or custodian on behalf of one or more actual owners of the funds, the FDIC will insure the funds as if the actual owners had established the deposit in the bank.

What is the amount of “pass-through” deposit insurance coverage?

- Assuming the deposit meets the requirements for pass-through insurance coverage, then the amount of FDIC insurance coverage will be based on the ownership capacity (i.e., under the applicable ownership category) in which each principal holds the funds.

Fiduciary and Agency Accounts

The requirements for pass-through coverage include:

- Funds must be owned by the principal not the third party who set up the account (i.e., the fiduciary or custodian who is placing the funds). To confirm the actual ownership of the deposit funds the FDIC may:
  - Look to the agreement between the third party establishing the account and the principal
  - Look to state law
- Bank's account records must indicate the agency nature of the account (e.g., XYZ Company as Custodian, XYZ FBO, Jane Doe UTMA John Doe, Jr.,)
- Bank's records or accountholder's records must indicate both the identities of the principals as well as the ownership interest in the deposit
- Deposit terms (i.e., the interest rate and maturity date) for accounts opened at the bank must match the terms the third party agent promised the customer
- If the terms don't match, the third party agent might be deemed to be the legal owner of the funds by the FDIC. An agent may retain a portion of the interest (as the agent's fee) without precluding pass-through coverage

Fiduciary and Agency Accounts

Aggregation of Deposits

- For the purpose of calculating FDIC deposit insurance coverage, any funds deposited by a third party on behalf of a principal will be added to any deposits the principal may have in the same ownership category at the same bank.

Fiduciary and Agency Accounts

Examples of a Bank's Involvement in Agency Accounts

A bank may accept or receive third party deposits in a number of ways including:

- As a direct depository for agency funds (most common situation)
- As an agent/broker placing funds with other banks as part of a third-party program
- As an agent/broker placing customers' funds with other banks as part of its own program

For more information, see Guidance on Deposit Placement and Collection Activities (FIL-29-2010), dated June 7, 2010.

Fiduciary and Agency Accounts

Example:

Facts: Assume the following four owners independently ask their broker "ABC Brokerage" to invest funds in bank deposits on their behalf - John Smith - $245,000, Mary Jones - $100,000, Sally and David - $495,000, and Betty Wilson - $160,000. The firm opens a co-mingled deposit in "First Great Service Bank" titled, "ABC Brokerage FBO" for a total of $1,000,000. Note that Sally and David independently are also depositors of "First Great Service Bank" and maintain an interest bearing MMDA account with a balance currently at $15,000.

Are all of these funds fully insured in "First Great Service Bank"?

Fiduciary and Agency Accounts

Example (continued) :

Are all of these funds fully insured in “First Great Service Bank”?

	ABC Brokerage	Customer Deposit	Total in Bank	Insured Amount	Uninsured Amount
John Smith	$ 245,000		$ 245,000	$ 245,000	$ 0
Mary Jones	100,000		100,000	100,000	0
Betty Wilson	160,000		160,000	160,000	0
Sally & David	$ 495,000	$ 15,000	$ 510,000	$ 500,000	10,000
Total	**$1,000,000**	**$ 15,000**	**$1,015,000**	**$1,005,000**	**$10,000**

Important!

With fiduciary or agency accounts, it is important to remember that all of a depositor’s funds in the same ownership category are added together in calculating deposit insurance coverage regardless of the source of the funds.

Sally and David have $510,000 in Category 2 – Joint Account category funds of which only $500,000 is insured resulting in $10,000 of uninsured funds.

PART 7

ISSUES WHEN AN FDIC-INSURED BANK MERGES OR FAILS

Issues When A Bank Merges or Fails

Coverage When Banks Merge

Basic rule - There is separate deposit insurance coverage (i.e., for deposits at each bank) for up to six months (starting with the effective date of the merger) if a depositor had funds in two banks that merge

- **Special exception for time deposits –** For time deposits (i.e., CDs) issued by the assumed bank, separate deposit insurance coverage will continue for the greater of either six months or the first maturity date of the time deposit

Issues When A Bank Merges or Fails

Coverage When A Bank Fails

FDIC pays depositors "as soon as possible"

- FDIC's goal is to make deposit insurance payments within two business days of the failure of the bank
- FDIC pays 100 cents or 100% on the dollar for **all insured deposits**
- Depositors with brokered deposits will take longer to recover their insured funds
- Depositors with uninsured deposits may recover a portion of their uninsured funds

Issues When A Bank Merges or Fails

Loans Offset Against Deposits

In the case of a non-delinquent loan, the depositor may elect to "set off" the loan against his/her deposits in order to receive full value for any uninsured deposits provided the following exists:

1) Mutuality – the exact same owner of both the deposit and loan at the bank
2) Not a "special purpose" deposit (e.g., funds held by the bank trust department for safekeeping)
3) The funds are not property of a third party
4) The offset is permitted by state law

Issues When A Bank Merges or Fails

Loans Offset Against Deposits Example:

John Smith has an outstanding loan in the amount of $400,000 in his name alone at XYZ Bank. In addition he has two deposits at XYZ Bank – Account #1 is a Single Ownership Account in his name alone for $300,000 and Account #2 is a Joint Account with his wife in the amount of $525,000. XYZ Bank fails and the FDIC is appointed the Receiver. The FDIC determines Account #1 has $50,000 of uninsured funds and Account #2 has $25,000 of uninsured funds.

Can John offset his uninsured funds in both accounts against his loan?

Issues When A Bank Merges or Fails

Loans Offset Against Deposits Example (continued):

<u>Answer:</u> Yes, in part

John can offset his loan against Account #1 for $50,000 but he cannot offset the uninsured funds in Account #2. The common law right of offset allows for the $50,000 to be offset against the $400,000 loan since there is mutuality (i.e., the exact same party for both the deposit and loan). Account #1 will be reduced to $250,000 and the outstanding loan balance is now $350,000. The joint account deposit with his wife does not meet the test for mutuality because there are two owners of the deposit and only one, John, as the debtor on the loan. Account #2 will therefore be uninsured for $25,000.

PART 8

DEPOSIT INSURANCE COVERAGE RESOURCES

FDIC Resources

- **FDIC Website**
  www.fdic.gov
- **FDIC's Electronic Deposit Insurance Estimator**
  www.fdic.gov/edie
- **FDIC's Deposit Insurance Coverage Website**
  www.fdic.gov/deposit/deposits
  - **Deposit Insurance Coverage Guides**
    - **Deposit Insurance Summary**
    - **Your Insured Deposits**
  - **Videos**
    - **Overview (30 minutes)**

FDIC Resources

- **Call the FDIC toll-free 1-877-ASK-FDIC (1-877-275-3342)**

Hearing impaired: 1-800-925-4618

Thank You for Participating in this Training